IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.5106 of 2006
Date of Decision : September 26, 2006.

Surinder Pal Singh ..... Petitioner

Vs.

Nachhattar Singh and another ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Gurcharan Dass, Advocate
for the petitioner.

* * *

P.S.Patwalia, J. :

The present revision petition has been filed challenging order dated 30.08.2006 passed by the Rent Controller Ludhiana dismissing an application filed by the petitioner-tenant under Order 35 Rule 3 CPC seeking to stay the proceedings of the eviction petition till the disposal of the interpleader suit filed by the petitioner-tenant against the landlord and one Rachhpal Kaur allegedly the sister of landlord.

Briefly the facts of the case are that a petition was filed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 by an

NRI landlord seeking eviction of the petitioner-tenant from one shop being part of the property located opposite the Punjab Agriculture University, Gate-II, Ferozepur Road, Ludhiana. The petition was filed in September 2002 and was pending for disposal on an application filed by the petitioner-tenant seeking leave of the court to contest the application. It was during the pendency of the petition that an application was filed by the tenant under Order 35 Rule 3 CPC seeking stay of the proceedings of the eviction petition on the ground that he had already filed an interpleader suit against the petitioner and his sister who, according to the tenant, was also claiming herself to be the co-sharer in the property and claiming rent from the petitioner-tenant. The said suit was pending in the court of the Civil Judge (Junior Division), Ludhiana and accordingly stay of the proceedings in the petition was sought under Order 35 Rule 3 CPC.

The landlord, respondent herein filed a reply opposing the application. He stated that Rachhpal Kaur was not the sister of the landlord-tenant and has only one sister namely Prithpal Kaur who is residing in Canada since 1964. It was pleaded that the landlord-petitioner is the owner in possession of the property in dispute and the present application had been filed just to delay the ejectment proceedings. Earlier also the petitioner-tenant had filed a false complaint against the landlord which was dismissed by the learned Chief Judicial Magistrate, Ludhiana wherein the petitioner-tenant had made a statement that he had taken the property in dispute along with Maikhu Ram from Nachhattar Singh. Apart from this earlier also the petitioner-tenant had filed a suit for injunction against the landlord where he had taken the plea that he had taken the property in dispute on rent from Nachhattar Singh-landlord. In the decree passed by the court in that suit,

the petitioner-tenant has admitted to be the tenant of the present landlord.

While considering the plea set up in the application the learned Rent Controller found that there is nothing on the file to even prima facie show that Rachhpal Kaur had ever filed any ejectment petition against the tenant claiming herself to be the landlord of the property in dispute. Only some verbal threats were said to have been extended to the tenant. It was further found that even in the application for leave to contest no such plea was raised by the tenants. The learned Rent Controller therefore found that the present application was just an after thought to prolong the decision of the petition. It is therefore that after noticing on Order 35 Rule 5 CPC to the effect that a tenant may not institute an interpleader suit against the landlords, the application was declined.

I have heard Shri Gurcharan Dass, Advocate who appears for the petitioner. He has relied upon the judgment rendered by this court in *Vijay Kumar Sud vs. Union Bank of India* reported as *2001 (1) RCR 342* to contend that it is open to a tenant to file an interpleader suit calling upon the civil court to decide title between the owners. He therefore prays that since in the present case the petitioner has filed an interpleader suit the proceedings should have been stayed.

A reading of the judgment referred to by the learned counsel would show that the facts of that case were totally different. There one Varinder Kumar Sud claiming himself to be the landlord of the premises filed an ejectment petition against the bank on the ground of non payment of rent. Vijay Kumar, the other brother of Varinder Kumar also filed an ejectment petition on the ground of non payment of rent. Since there were rival landlords the bank filed an interpleader suit and in that view of the

matter the trial court stayed the proceedings in the rent petitions. It is under those circumstances that the order of the trial court seeking stay was maintained in first appeal and thereafter by this court in the aforementioned revision petition. The facts of the present case are however totally different. No eviction petition has been filed by Rachhpal Kaur. The threats held out by her are oral. Before me learned counsel had sought to contend that she had claimed rent from the petitioner. However he stated that even that claim was made orally. In view of the aforementioned facts I am of the opinion that judgment in *Vijay Kumar Sud's* case (supra) would have no application to the facts of the present case.

On the other hand the trial court has relied upon Order 35 Rule 5 which reads as under :-

> **"*Agents and tenants may not institute inter-pleader suits* –** *Nothing in this order shall be deemed to the enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any person other than persons making claim through such principals or landlords."*

Interpreting the aforesaid provision a learned Single Judge of this Court in the case of *Smt.Mohani Devi vs. Sh.Gokal Chand and another* reported as 1991 (1) PLR 181 has held as hereunder :-

> ***"6.*** *Order 35 Rule 5 of the Code clearly bars such a suit by a tenant against the landlord unless seemingly a dispute arises between the landlord due to which a tenant may be in*

predicament as to whom to pay the rent. This is not the case here. According to the tenant and defendant no.1, there is relationship of landlord and tenant between them and if that is so even if defendant No.2 wanted to claim rent, interpleader suit on these simple facts was not maintainable. Even on the contrary if the tenancy was created by defendant no.2 in favour of the plaintiff and later on defendant no.1 wanted to claim rent from the plaintiff, that would not have furnished a cause to file interpleader suit.

7. *Two illustrations have been mentioned in Order 35 Rule 5 of the Code and the trial court is not dismissing the interpleader suit as not maintainable, has relied on illustration. That illustration is not applicable to the facts of the case and if one has to analyse illustrations (a) and (b) then illustration (a) would have been more apt to the facts of the case then illustration (b).*

8. *The trial Court also erred in law in relying on a decision of this Court in 1981 Shimla Law Journal, Punjab and Haryana 241, is not dismissing the interpleader suit. There, the facts were entirely different. While the tenant was paying the rent to the landlord from whom he had taken the premises on lease, another person, who*

was father of the original landlord filed an ejectment application against the tenant on the ground of non payment of rent and in those proceedings, the tenant had to tender the rent under protest to safeguard his tenancy. On those facts, the interpleader suit along with relief for refund was filed and it was held that such a suit was maintainable. Such examples can be multiplied. Another example can be where the original tenant dies and on his death two persons came forward to claim ownership. In such a situation, it will have to be seen as to who is the real heir to the estate.

9. *In this case, there is no such dispute whatsoever. The tenant did take possession of the premises either from defendant no.1 or defendant no.2 and remained in possession. They are bound to pay rent to whom they have been paying so far and if necessary to restore possession to that person. Merely by raising the allegations that both the defendants are claiming rent would not justify filing of the interpleader suit. Since there is no other cause shown in the plaint for filing of the interpleader suit, the suit is clearly misconceived."*

Further another Single Bench of this Court in the case of *Punjab State Electricity Board and another vs. Sudesh Rani* reported as

1992-2, Vol.102 PLR 541 has held as hereunder :-

> ***"12.*** *In the instant case, the facts are entirely different. No second petition has been filed by any other person seeking eviction of the petitioner-Punjab State Electricity Board. In fact, it is not even stated so in the copy of plaint of interpleader suit placed on record. In later judgment in Smt.Mohani Devi vs. Gokal Chand (supra), G.C.Mittal, J. held that proceedings under Section 13 of the Act are not liable to be stayed at the behest of the tenant who otherwise also is not justified to file an interpleader suit in view of bar of Order 35 Rule 5 C.P.C."*

Still further in the case of *Jugal Kishore and others vs. Bhagwan Dass and others* reported as *1990 (2) RRR 26*, a Single Bench of this Court has held as hereunder :-

> *"According to the said provisions, the tenant could not sue his landlord for the purposes of compelling them to inter-plead with any persons other than persons making claim through such principals or landlords. Admittedly, in the present case defendants Nos. 4 to 19 are not claiming through the landlord defendant Nos.1 to 3. They claim themselves to be owners of the shop in dispute and have denied the rights of defendants Nos. 1 to 3. In these circumstances, the said*

provisions of Order 35 rule 5 CPC, were clearly attracted and the tenants here could not maintain the suit against the landlords i.e., defendants No.1 to 3 compelling them to inter-plead with defendants no.4 to 19."

The facts as recapitulated herein above would show that in the present case Rachhpal Kaur has not filed any suit against the tenant. The tenant has already admitted the respondent herein to be his landlord in the criminal complaint filed by him as also in the earlier civil suit. Thus the provisions of Order 35 Rule 5 are attracted to the facts of this case. Still further the present application is clearly an effort on the part of the tenant to prolong the decision in petition under Section 13-B of the Act. I therefore find no error in the view taken by the learned trial court in dismissing the application filed by the petitioner. The present revision petition is therefore dismissed in limine.

September 26, 2006 (P.S.Patwalia)
monika Judge